

January 18, 2017

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: WC Docket No. 11-42 Lifeline and Link Up Reform and Modernization
WC Docket No. 09-197 Telecommunications Carriers Eligible for Universal
Service Support
WC Docket No. 10-90 Connect America Fund
NOTICE OF EX PARTE PRESENTATION**

Dear Ms. Dortch:

This letter is submitted on behalf of our client, TracFone Wireless, Inc. (“TracFone”). The purpose for this letter is to bring to the attention of the Commission and the Wireline Competition Bureau a practice which is being engaged in by certain wireless providers of Lifeline services. The practice described herein may violate the intent of the rules recently promulgated in the Commission’s Lifeline Modernization Order (Lifeline and Link Up Reform and Modernization, et al, 31 FCC Rcd 3962), and, unless addressed promptly, will undermine the Commission’s effort to modernize the Lifeline program to enable qualified low-income households to obtain affordable Broadband Internet Access Service. The specific practice involves abuse by certain Lifeline providers of the so-called “port freeze” rule in order to “lock up” for twelve months those Lifeline customers who were enrolled as voice-only Lifeline customers and who were provided with standard cellular telephones suitable for voice and text messaging, but which are unsuitable for use with Broadband Internet Access Service.

Beginning in December 2016 and continuing into January 2017, TracFone has experienced a sudden and unanticipated decline in the number of Lifeline consumers transferring into its SafeLink Wireless® Lifeline service relative to the number of customers transferring from TracFone’s service to other providers’ Lifeline services. It is well known that there has been a high churn rate among Lifeline consumers and that many consumers switch their preferred Lifeline provider from one Eligible Telecommunications Carrier (“ETC”) to another. However, never before in the nearly 9 years that TracFone has provided Lifeline service as a designated ETC has it seen such a profound reduction of inbound ports.

TracFone investigated this situation and discovered that many persons who had attempted to enroll in the SafeLink Wireless® Lifeline program were unable to do so because their accounts had been “frozen” by their current Lifeline providers. Specifically, when SafeLink® enrollment applications were submitted to the National Lifeline Accountability Database (NLAD), the applicants received the following response:

You appear as “enrolled” in Lifeline Benefits with another provider according to the National Lifeline Accountability Database (NLAD). We are unable to transfer you over at this time. You will be able to transfer your benefit to SafeLink Wireless starting 12/03/2017. Please try again after that date.

TracFone employees and agents were able to obtain photographs of the devices of certain of those customers whose Lifeline accounts had been frozen for 12 months starting December 3, 2016 (the effective date of the revised Lifeline rules was December 2, 2016). In all such cases, the devices were standard wireless handsets (commonly known in the wireless industry as “feature phones”). Those customers’ devices are not smartphones and are not intended for use with a Broadband Internet Access Service as that term is defined by the Commission. Section 54.400(l) of the Commission’s rules defines Broadband Internet Access Service as: “*a mass market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial up service.*” Customers using such feature phones are not able to transmit and receive data from all or substantially all Internet endpoints. Feature phones have only limited capacity to send and receive emails and are impractical for downloading quantities of Internet data such as video or music files or for downloading and storing applications. For those reasons, consumers hardly ever use their feature phones as Internet access devices. In short, consumers using such devices do not enjoy access to Broadband Internet Access Service.

As codified at Section 54.411 of the Commission’s rules, freezing the accounts of Lifeline customers for 12 months is permissible only for broadband Lifeline services. Lifeline accounts for voice-only services may be frozen only for 60 days. During the Lifeline proceeding which resulted in the port freeze rule, certain parties advocated a 12 month port freeze period. One such party calling itself the Joint Commenters asserted that allowing providers to freeze their Lifeline accounts for 12 months will incentivize providers to “make more significant investments in devices and services” The Commission agreed with that rationale, but only with respect to broadband Lifeline. In that order, the Commission stated as follows: “We find that allowing broadband providers the security of a longer term relationship with subscribers will incentivize greater up-front investments from providers. **Those investments in broadband-capable devices and broadband services** should improve the quality of new offers for subscribers and further spur competition among providers to offer more innovative services.” Lifeline Modernization Order at ¶ 389 (emphasis added). That stated rationale for the 12 month port freeze for broadband Lifeline would be undermined if providers are allowed to “freeze” for 12 months rather than 60 days their pre-existing voice-only service bases of customers provided with feature phones.

Moreover, TracFone also discovered that certain Lifeline providers which claim to provide mobile broadband Lifeline service through use of feature phones are not even purporting to “provide” 500 MB of mobile broadband data — the minimum service standard for broadband data codified in the Commission’s rules (See 47 C.F.R. § 54.408(b)(2)). At least one such

provider is offering only 10 MB of mobile broadband data (far below the 500 MB minimum requirement) and relying on Wi-Fi to meet the minimum service standard. A customer who had unsuccessfully attempted to transfer its Lifeline support to TracFone showed a TracFone representative the message which appeared on the customer's feature phone device screen. A copy of that photograph is attached to this letter. The message on the device screen states as follows:

Your Unlimited Talk and Text service has expired.

Congrats! You have received free upgrade to a new Lifeline plan with 500 Minutes, Unlimited Texts, and 10 MB data. Plus Free Premium Wi-Fi from iPass. For more details login

Given the large number of attempted TracFone inbound ports which have been rejected in December 2016 and January 2017 on the basis that the accounts have been frozen until December 2017, it appears that this practice of asserting 12 month por freezes on what have been voice-only Lifeline services using carrier-provided feature phones is widespread. By this letter, TracFone respectfully asks the Commission and its Wireline Competition Bureau to clarify that the revised Lifeline rules only permit 12 month por freezes on broadband Lifeline services which meet the 500 MB minimum service standard for mobile broadband services, that Lifeline service provided to consumers using feature phones does not enable Lifeline consumers to utilize Broadband Internet Access Service as that term is defined in the Commission's rules, and that broadband access through Wi-Fi does not meet the 500 MB minimum standard.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically. If there are questions, please communicate directly with undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

Attachment

cc: Mr. Matt DelNero
Mr. Trent Harkrader
Mr. Ryan Palmer
Ms. Garnet Hanly

Attachment

Make sure to keep your face framed within the viewfinder.

minors) live with you at your address?

A parent: **NO**



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CLOSE →

✓ E-SIGN AND CONTINUE

